IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14-03-2006

Coram:

THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO

W.P. No.5205 OF 1999

The Regional Provident
Fund Commissioner,
Tamil Nadu and Pondicherry States
Employees Provident Funds
20 Royapettah High Road,
Chennai 600 014 .... Petitioner

:versus:

1. M/s. India Pistons Ltd.,
A-4 Industrial Estate,
Maraimalai Nagar,
Kanchipuram District

2. The Presiding Officer,
Employees Provident Funds
Appellate Tribunal,
7th Floor, 60 Skylark Bldgs.
New Place, New Delhi 110 019 .... Respondents

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Petition under Art.226 of the Constitution, praying for a Writ of Certiorari, calling for the records of the second respondent relating to the order dated 24-11-1998 passed by the second respondent in Appeal No.ATA-13(84)98 and quash the said order dated 24-11-1998.

For Petitioner :: Mr. V. Vibhishnan
For Respondents :: Mr. S. Ravichandran (R1)
for T.S. Gopalan & Co.

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ORDER

This writ petition was filed seeking the relief of Writ of Certiorari, calling for the records of the second respondent relating to the order dated 24-11-1998 passed in Appeal No.ATA-13(84)98 and quash the said order dated 24-11-1998.

2. M/s. India Piston Limited is part of M/s. Simpson Group of Companies. The main factory of M/s. India Piston

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Limited is situate at Sembium and in the year 1987 it started another unit at Maramalai Nagar, which is the first respondent in this writ petition. M/s. India Piston Limited is covered under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act'). In the year 1990, the first respondent unit sought for the allotment of separate code number for the purpose of the Act on the ground that it is totally a different legal entity and hence entitled to the infancy protection under Sec.16(d) of the Act. The Department, however, held that the first respondent unit is part and parcel of the main unit at Sembium and that, therefore, it is not entitled to infancy protection. The first respondent raised a dispute under Sec.7A of the Act before the petitioner for determining the question of infancy, who, by order dated 23-6-1998, rejected the claim of the first respondent holding that the two units of India Pistons Limited, one at Sembium and another at Maraimalai Nagar constitute an integrated whole for the purpose of the Act, that the Maraimalai Nagar unit is not entitled to infancy protection under Sec.16(d) of the Act and that the Maraimalai Nagar unit shall comply with the provisions of the Act from January 1987 in the subcode number allotted to them. Aggrieved by the order passed by the Regional Provident Fund Commissioner, the first respondent preferred an appeal before the Employees Provident Fund Appellate Tribunal. The appellate authority, by the impugned order dated 24-11-1998, set aside the order passed by the Regional Provident Fund Commissioner and allowed the appeal holding that the new unit at Maraimalai Nagar should be treated as an independent unit and not a part or a branch of the main unit at Sembium and that the new unit is entitled for infancy protection under the Act. Aggrieved, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner vehemently argued that the factory unit of M/s. India Pistons Limited at Maraimalai Nagar is a branch of the main factory situated at Sembium. Though both the units manufacture the very same products, they cater the needs of different segments of the automobile industry. It is an admitted fact that India Pistons Limited is one of the group companies of M/s. Simpson Group of Companies and thus the common ownership of the establishment is very well accepted and that even though the factories maintain separate accounts, the accounts get merged as a single balance sheet for the purpose of preparation of Annual Report and that there is financial integrality and interdependency between the two units. Therefore, the first respondent unit is not entitled for infancy protection due to the existence of interdependency and unity of management. Merely because, the other statutory authorities treat the first respondent unit with separate registration that by itself will not be a criteria for deciding the question of entitlement of infancy. Learned counsel further argued that the Tribunal erred in coming to the conclusion that the two units are different units and that the first respondent unit is entitled for infancy protection. According to the learned

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counsel, the units of M/s. India Pistons Ltd, one at Sembium and the new one at Maraimalai Nagar, have to be clubbed and treated as one unit for the purpose of compliance of the provisions of the Act and that the first respondent unit should comply with the provisions of the Act from 1-1-1987 and that it is not entitled to infancy protection under Sec.16(d) of the Act.

4. On the other hand, learned counsel for the first respondent argued that the first respondent unit is a new unit and independent of the other unit at Sembium. The first respondent is treated as a separate unit by the other statutory authorities and is having separate registration under the Factories Act, Income Tax Act, Employees' State Insurance Act, etc. The first respondent unit has separate management, separate supervision and separate work force and having independent finance. The products manufactured by the first respondent unit is different from the products manufactured by the other unit at Sembium. The Sembium unit manufactures the pistons meant for heavy vehicles whereas in the first respondent unit pistons for latest models and high speed and fuel efficient engines for light commercial vehicles and two wheelers are being produced which require high technology. Learned counsel further argued that the new unit set up by the same employer without having any interdependency or unity of employment or financial integrality cannot be considered as a branch or extension of the other unit. The first respondent unit is governed by separate standing orders as approved by the Government of Tamil Nadu and that the Sembium unit is having separate standing orders. The raw materials required for Maraimalai Nagar are directly purchased and the end products are marketed through separate agencies. The products manufactured at the first respondent unit are directly marketed to the customers and not through Sembium unit and that the first respondent unit can function conveniently without the support of the Sembium unit and both are different and distinct entities. Learned counsel therefore argued that the first respondent unit cannot be clubbed with the Sembium unit.

5. Now let us examine the case-laws relied on by the learned counsel for the parties with reference to the facts and circumstances of the present case. In RAMAKRISHNA RAO v. THE STATE OF KERALA (AIR 1968 SC 1367), the Supreme Court while considering the provisions of Sec.16(1)(b) and Sec.1(3)(b) of the Employees' Provident Fund Act held as follows:

> "The language of Section 16(1)(b) is very precise. ... ... The intention behind Section 16 read with paragraph 26 quite clearly shows that the period is intended to give a breathing time to new establishments. That reason does not hold when the establishment is already old and well founded."

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6. In STATE OF PUNJAB v. SATPAL AND ANOTHER (AIR 1970 SC 655), the Supreme Court, referring to the decision in Ramakrishna Rao's case, cited supra, held as follows:

> "The period of infancy mentioned in Section 16(1)(b) of the Employees' Provident Funds Act, 1952 should be calculated from the first day of the establishment of the factory and not from the moment of time when the figure of employment of 20 or more workmen is first reached."

7. In REGIONAL PROVIDENT FUND COMMISSIONER, JAIPUR v. NARAINI UDYOG AND OTHERS (1996) 5 SCC 522 held as follows:

> "The High Court was wholly unjustified in concluding that both the firms being registered under the Companies Act as two different individual identities were two independent companies and could not be clubbed together for the purpose of levying contribution under Section 7-A of the Act. It is true, as found by the High Court, that they are registered as two independent units and represented separately by the members of a Hindu Undivided Joint Family. Nonetheless the Commissioner recorded, as a fact, the functional unity and integrality between the two concerns. Consequently, the definition of 'establishment' which was widely defined would encompass within its ambit the two units as an establishment for the purpose of the Act."

8. In REGIONAL PROVIDENT FUND COMMISSIONER AND ANOTHER v. DHARAMSI MORARJI CHEMICAL CO. LTD. (1998 [I] LLJ 1060), the Regional Provident Fund Commissioner preferred the appeal from the judgment of the High Court in a writ petition filed by the respondent. The Supreme Court while dismissing the appeal, upheld the impugned judgment of the High Court which held that factory at Roha of the respondent was a separate establishment and not a part of Ambarnath factory of the respondent, so that the Roha factory was entitled to infancy benefit as a new establishment under Sec.16(1)(b) of the P.F. Act, 1952. The Supreme Court observed that the fact that both factories were owned by a common owner, namely the respondent-company, was not sufficient unless there was clear evidence to show that there was interconnection between these two units and there was common supervisory financial or managerial control. Such evidence was not available in the present case. Hence, the Supreme Court dismissed the appeal.

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9. In the present case, before the Regional Provident Fund Commissioner, the first respondent, in support of their claim for infancy protection under Sec.16(d) of the Act, pleaded the following:

1. The factory at Maraimalai Nagar has got separate registration under various statutory authorities;

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2. The Maraimalai Nagar unit is located 50 Kms away from Sembium Unit and the Employees State Insurance Corporation has treated Maraimalai Nagar Unit as separate establishment and allotted separate number to it.
3. The Maraimalai Nagar Unit is governed by separate standing orders as approved by the Government of Tamil Nadu and Sembium Unit is having separate standing orders.
4. The Pollution Control requirement at Maraimalai Nagar Unit has got a separate consent order.
5. The wage structure in respect of the employees of Sembium Unit and Maraimalai Nagar unit are different and each has its own salary structure.
6. The raw materials required for Maraimalai Nagar are directly purchased and the end products are marketed through separate agencies. The product manufactured at Maraimalai Nagar are directly marked through customers and not through Sembium factory.
7. The employees of Sembium Unit are members of Simpson Group of Companies workers and Staff Union wheras the workmen of Maraimalai Nagar are members of the Tamilnadu Engineering Employees' Union.
8. The Maraimalai Nagar Unit can function conveniently without the support of the Sembium Unit and both are distinct entities."

The establishment further pleaded that the employees' in these two units are not transferable, that they are having different wage structure and that they are having different standing orders.

10. The Department resisted the claim of the establishment by stating that assignment of separate registration numbers by the various authorities by itself will not be a criterion for deciding the question of entitlement of infancy. It was also pointed out before the Commissioner that the common ownership of the establishment was very well accepted by the authorised representative of the establishment.

11. The Commissioner, on going through the records produced by the establishment and the department and upon hearing the arguments of both parties, in his order observed that M/s. India Pistons Limited is a part of a bigger group by name M/s. Simpson Group of companies and they are having interest in various activities like Machine, Tool, Automobile, Printing, etc. India Pistons Limited maintain a separate identity in the group and have their own balance sheet. The Commissioner further observed that from the statements made in the Annual Report of India Pistons Limited for the year 1987, it was clear that the test of unity of management was fully satisfied and it was unambiguously clear that the unity of management goes with the financial integrality of the two units. The Commissioner ultimately came to the conclusion that India Pistons Limited at Sembium and Maraimalai Nagar form part of an integrated whole and

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cannot be treated separate entities for the purpose of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The Commissioner, therefore, passed the following order:

1. The two units of India Pistons Limited, at Sembium and Maraimalai Nagar constitute an integrated whole for the purpose of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
2. The second unit of India Pistons Limited at Maraimalai Nagar is not entitled to infancy under Sec.16(d) of the Act.
3. The Maraimalai Nagar Unit of the India Pistons Limited shall comply with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 from January, 1987 in the subcode numbers allotted to them.

12. The establishment preferred an appeal against the order passed by the Commissioner before the appellate Tribunal. The Tribunal reversed the order on the grounds that only because of common ownership and the Board of Directors being common, the two establishments cannot be clubbed, that even the end products of the two factories are not similar, that similarity of the code number of the product and the name of the product is not sufficient as pistons of heavy vehicles and light vehicles, two wheelers are quite dissimilar, that the vehicles of latest model are using pistons of newly invented fuel saving engine components, that there is no interchangeability of the managerial, supervisory staff of workers between the two factories, accounts of income and expenditure of the two factories are prepared separately and there was nothing on record to show that they are interdependent and one cannot survive without the other. The appellate Tribunal therefore allowed the appeal holding that the new unit should be treated as independent unit and not a part or branch of the old factory.

13. As observed by the Hon'ble Supreme Court in the In RAMAKRISHNA RAO v. THE STATE OF KERALA (AIR 1968 SC 1367), which was followed in STATE OF PUNJAB v. SATPAL AND ANOTHER (AIR 1970 SC 655), the language of Section 16(1)(b) is very precise and clear to indicate that the intention behind the "infancy protection" under Section 16(1)(d) of the Act is to give a breathing time to new establishments and such protection is not extended to the establishments which are already in existence and well founded. The first respondent establishment in their Annual Report for the year 1987 claimed themselves that as reported last year, the new unit was set up at Maraimalai Nagar, a backward area near Madras, with an annual production capacity of seven lakh pistons per annum, with a capital outlay of Rs.6.5 crores was completed during the year. The company was now geared to meet the changed market requirements for the new breed of vehicles and look forward to reap the long term benefits that should flow from this investment. The plant went into

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commercial production in January 1987 and has already produced nearly one lakh pistons, the bulk of which was absorbed by Maruti Udyog Limited. The new plant set up at Maraimalai Nagar would cater to the latest models and high speed and fuel efficient engines in cars, light commercial vehicles and two wheelers and to keep pace with the market requiring high technology, the company was continuing with its plans of modernisation and replacement at its plant at Sembium. From the above statement, it is very clear that the first respondent Unit, though started in a backward area, is a well founded unit without requiring any breathing time, as observed by the Supreme Court in the aforesaid decisions.

14. The intention of the legislature in giving infancy protection under Sec.16(1)(d) of the Act is to allow the newly established units to pick up and stabilise their production activities. In the present case, there is no such requirement of giving any breathing time as the first respondent unit is a well founded unit from the date of its inception, though the said unit was located in a backward area and it has got separate registrations under various statutory enactments, located 50 kms. away from the Sembiyam unit, having its own standing orders and the wage structures of its employees are separate and distinct from that of Maraimalai Nagar unit. As seen from the facts and circumstances of the case and has rightly observed by the original authority that the original unit at Sembiym is a part of a bigger group of M/s. Simpson Group of Companies which manufactures and supplies pistons for heavy motor vehicles and other allied vehicles and with a view to meet the growing demand for supply of pistons for light motor vehicles like four wheelers, motor cycles, etc. the Management of Simpson Group of Companies thought it appropriate to establish a new unit at Maraimalai Nagar for the production of pistons meant for light commercial vehicles and two wheelers. The Management by using the goodwill of the main industry and investing the required finance, started the new unit at Maraimalai Nagar. Further, the infancy protection envisaged under Sec.16(1)(d) was intended to give some breathing time to the newly established units and such protection need not be given to each and every new unit, if such new unit is able to stand on its own legs from the date of its inception. Considering the facts and circumstances of the present case, since the new unit was having the adequate financial support and protection for its stability from its promoter, I am of the opinion the petitioner unit is not entitled to seek infancy protection under Sec.16(1)(d) of the Act and the appellate Tribunal was not correct in reversing the order passed by the Commissioner.

15. For the above reasons, I am of the considered view that the two units of the India Pistons Limited, one at Sembium and the other at Maraimalai Nagar constitute an integrated whole for the purpose of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, that the first respondent unit is not entitled to claim infancy

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protection under Sec.16(1)(d) of the Act and the first respondent, therefore, comply with the provisions of the said Act from January, 1987.

14. In the result, the impugned order is set aside and the writ petition is allowed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

Jai

To:

The Presiding Officer
Employees Provident Funds Appellate Tribunal
7th Floor, 60 Skylark Bldgs. New Place
New Delhi 110 019

1 cc to Mr.V. Vibhishanan, Advocate, Sr. 12260
1 cc to M/s. T.S. Gopalan & Co. SR. 12256

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